

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Ralf Keller,
Plaintiff,

vs.

**Chippewa County Board of Commissioners
and Chippewa County Sheriff's Department**
Defendants.

Frank G. Becker (P25502)
Attorney for Plaintiff
18501 West 10 Mile Road
Southfield Michigan 48075
248-789-2437
frankgbecker@yahoo.com

COMPLAINT

NOW COMES Plaintiff, **Ralf Keller**, by and through his attorney, Frank G. Becker, and brings this action pursuant to Title II of the Americans with Disabilities Act ("ADA") (*42 U.S.C. § 12131* et seq.) and Section 504 of the Rehabilitation Act of 1973 (*29 U.S.C. § 794* et seq) to redress the deprivation of his rights secured by the laws of the United States. Monetary and injunctive relief are requested in this Action. In support of this Complaint, Plaintiff asserts as follows:

1. A.) Plaintiff, **Ralf Keller**, is a citizen of the United States, and currently resides within his private residence located in Sault Ste Marie Michigan. At the time

of the incidents creating this cause of action herein, Plaintiff was a prehearing detainee, based on non-violent charges, in the Chippewa County Jail for a three (3) day period. Plaintiff is no longer an inmate of any penal institution.

B.) Plaintiff, **Ralf Keller**, is, and was at all relevant times herein, significantly disabled as his left leg was necessarily amputated slightly below his knee and Plaintiff, Ralf Keller, also suffered from severe chronic obstructive pulmonary disease (Hereinafter COPD) requiring the use of devices, including inhalers, to support his breathing. Based on these conditions and his general poor health, Plaintiff and has been determined to be fully disabled by the United States Social Security Administration.

C.) Plaintiff's disabilities render him in constant and essential need of his prosthetic leg and an inhaler device. Pursuant to Title II of the ADA, Plaintiff, Ralph Keller, is a "a qualified individual with a disability" as defined by *42 U.S.C. § 12102*. who, despite such disability is entitled to full access and participation and "not to be discriminated against by such entity." *42 U.S.C. § 12132; 42 U.S.C. § 12102* and *29 C.F.R. § 1630.2*. The Plaintiff's physical disabilities substantially limits, at a minimum, his major life activities of breathing, standing, walking, moving, lifting, carrying, balancing and bending. Consequently, it is necessary for Plaintiff, Ralph Keller, to be allowed to use his prosthetic leg and to have a small inhaler in his possession to undertake normal activities of daily living. Plaintiff's

prosthetic leg consisted primarily of plastic was of relative light weight and had no sharp edges that would pose a hazard. The prosthetic limb also was not visible if the Plaintiff wore normal long pants.

2. A.) Defendant, **Chippewa County Board of Commissioners** is the body responsible for governing **Chippewa County** (Hereinafter Chippewa County) and is a "public entity" as defined by *42 U.S.C. § 12131(1)* and by the Department of Justice's regulation implementing Title II, *28 C.F.R. § 35.104*. The Administrative Office for Chippewa County is located at 319 Court St, First Floor, Sault Ste. Marie, MI 49783. This Defendant owns and operates the Chippewa County Jail and is responsible for providing and maintaining accommodations and establishing and maintaining policies, procedures and employee training for all Chippewa County facilities, including the Chippewa County Jail.

B.) Defendant, **Chippewa County Sheriff's Department** is a public entity as defined by Title II of the ADA and by the Department of Justice's regulation implementing Title II. *28 C.F.R. § 35.104* and is located at 325 Court St #3, Sault Ste. Marie, MI 49783. This Defendant operates and maintains the Chippewa County Jail and has supervisory control over its employees and jail occupants including custodial control of the Plaintiff. Additionally, during Plaintiff's incarceration, this Defendant also had full responsibility and a constitutional obligation to provide for the health and safety of the Plaintiff. This

Defendant also was responsible for establishing and maintaining policies, procedures and deputy/employee training at the Chippewa County Jail.

C.) The Defendants, individually and collectively, based on their supervisory, policy making and custodial control over the Plaintiff, Ralph Keller, made and enforced policies and enforced orders that prevented the Plaintiff, who willingly presented his prosthetic leg and inhaler medical device to the Defendants for inspection, from retaining his prosthetic leg and small inhaler device, which imposed no hardship or cost to the Defendants, without conducting any individual assessment of the Plaintiff and the surrounding facts and circumstances.

3. The incidents giving rise to this litigation occurred in Sault Ste. Marie, Michigan within the jurisdiction of this Court during Plaintiff's incarceration within the **Chippewa County Jail**. The amount in controversy exceeds \$75,000.00.

4. This action arises pursuant to Title II of the Americans with Disabilities Act ("ADA") (*42 U.S.C. § 12131* et seq.) and Section 504 of the Rehabilitation Act of 1973 (*29 U.S.C. § 794* et seq) as interpreted and applied by relevant case law and regulations.

5. Jurisdiction is conferred upon this Court pursuant to *28 U.S.C. § 1331* and *28 U.S.C. § 1343* because the matters in controversy arise under the laws of the United States and, thus, a federal question exists.

6. Venue is proper in this Court and Division under *28 U.S.C. § 1391(b)* because the events that give rise to Plaintiff, **Ralf Keller**'s claims took place within this Judicial District and Division and the Defendants were and are located within this Judicial District.

7. The Defendants, jointly and severally, are responsible for the supervision, custody, safety and wellbeing of persons entering the Chippewa County Jail and had final policy making authority, direct supervisory custody and control over the Plaintiff who was a pre-hearing detainee incarcerated within the Chippewa County Jail.

8. On or about January 16, 2016, Plaintiff entered the Chippewa County Jail and was denied the use of his prosthetic left leg and any alternative walking aid and was denied the possession and prescribed use of his small inhaler device necessary for maintenance of his breathing and a treatment aid for his COPD condition. Plaintiff specifically requested the use of his prosthetic leg and his inhaler and explained the necessity of both for him to undertake the activities of daily living. No reason was given for the denial of the use of his prosthetic leg and inhaler. Plaintiff was never apprised of any ADA policy and no reasonable accommodations for Plaintiff was supplied or even offered.

9. The Plaintiff was housed in a holding cell during his stay until he became bedridden due to an acute exacerbation of his COPD Condition. The

Holding Cell, which had only steel benches and other areas of the Chippewa County Jail, in general, was constructed and provided services, such as meal distribution, commode facilities and exercises, were designed for use by persons who had two legs and were able to breathe normally. Consequently, it was necessary for the Plaintiff to have the use of his prosthetic leg and inhaler for him to effectively obtain his meals, comply with orders, have his meals, maintain hygiene and otherwise have full access to the Chippewa County Jail facilities and services.

10. The Defendants failed to make, or even attempt to make, any meaningful, individualized assessment, sought no evidence from Plaintiff or otherwise, considered no objective evidence and never considered allowing Plaintiff, who was wearing long pants, the reasonable accommodation of the use of his prosthetic leg and breathing aid. The effects of the denial

COUNT I

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

11. Plaintiff repeats and realleges and incorporates, as though fully set forth herein, each allegation contained above.

12. Defendants' conduct, as described in this Complaint, constitutes discrimination based on disability in violation of Title I of ADA, **42 U.S.C. § 12111**, *et seq.*, and its implementing regulations, **29 C.F.R. Part 1630**, *et seq.*,

Defendants' discriminatory conduct caused Plaintiff, to suffer damages and he continues to suffer damages because of the discrimination.

13. Plaintiff, Ralph Keller, is a small frail, non-violent man and the use of his prosthetic leg and small inhaler posed no risk of harm to the security of the jail and to other inmates and his long pants would have even prevented the prosthetic from being noticed by other inmates. Plaintiff's placement in the holding cell assured very close observation so there was no actual threat of harm.

14. Under the circumstances of this case, allowing the Plaintiff to retain his prosthetic leg would not have imposed any "undue financial and administrative burdens" on Defendants and would not have created a significant health and safety risk or been a direct threat to others. Nor did the removal of his prosthetic leg serve any legitimate penological interests or require any alteration in the nature of the Defendants' Chippewa County Jail facility and programs. Indeed, removal of his prosthetic leg and inhaler medical device rendered the Plaintiff totally vulnerable to assaultive conduct and to greatly more susceptible to falls and injury causing Plaintiff to drastically limit all movement and interaction during his incarceration.

15. Defendants had a duty pursuant to Title II of the ADA, **42 U.S.C. § 12132**, to the Plaintiff, who was a "qualified individual with a disability" to not be excluded from the participation in or be denied the benefits of the services, or activities of a public entity or be subjected to discrimination by Defendants.

16. Defendants violated Plaintiff 's rights under Title II of the ADA by subjecting him to discrimination by removing his prosthetic leg and depriving him of the use of this prosthetic leg during his entire state in the Defendants' Chippewa County Jail facility and by not allowing the Plaintiff to retain the use of his breathing aid, the small inhaler device, which resulted in the severe exacerbation of his COPD condition and eventual hospitalization.

17. Defendants had actual knowledge and their employees and agents could daily visibly observe the deleterious limiting effects of the removal of his artificial leg and inhaler as the Plaintiff was not able to function regarding his major life activities of breathing, standing, walking, moving, lifting, carrying, balancing and bending stated by way of example and not limitation. Nevertheless, Plaintiff's artificial leg and medical inhaler device was not returned to him for use. Based on this summary of relevant facts, the Defendants have discriminated against the Plaintiff pursuant to the Americans with Disabilities Act, based on the circumstances delineated herein individually and collectively.

COUNT II

VIOLATION OF THE REHABILITATION ACT

18. Plaintiff repeats and realleges and incorporates, as though fully set forth herein, each and every allegation contained above.

19. Section 504 of the Rehabilitation Act, **29 U.S.C. § 794**, states

that "no otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

20. As an inmate within Chippewa County Jail facility, Plaintiff was an "otherwise qualified individual" with a disability under the Rehabilitation Act and Defendants receive federal financial assistance. Each of the Defendants had a legal duty to establish and implement procedures and plans to ensure that the Plaintiff was provided his prosthetic leg and inhaler medical device as reasonable accommodations.

21. Defendants violated Plaintiff 's rights under Section 504 of the Rehabilitation Act by subjecting him to discrimination based on the unexplained and unconsidered denial of the use of his prosthetic leg and inhaler during the entire period of his incarceration as more fully set forth above.

22. Based on the circumstances, allowing the Plaintiff, Ralph Keller, to retain and use his prosthetic leg and possession of his inhaler did not present a direct threat to the health or safety as defined under the Rehabilitation Act.

23. Based on a blanket policy, as promulgated and/or actually applied, against allowing inmates to retain and use any prosthetic limb and breathing devise Plaintiff received no individualized assessment of his specific situation to

determine whether he posed little to no risk to others and did not meant the statutory level of "significant. "

24. Defendants had actual knowledge and their employees and agents could daily visibly observe the deleterious limiting effects of the removal of his artificial leg and inhaler as the Plaintiff was not able to function regarding his major life activities of breathing, standing, walking, moving, lifting, carrying, balancing and bending stated by way of example and not limitation. Nevertheless, Plaintiff's artificial leg and medical inhaler device were not returned to him for use. Based on this summary of relevant facts and the circumstances delineated herein, Defendants have violated the Rehabilitation Act, based on the circumstances defined herein individually and collectively.

CAUSATION AND DAMAGES

25. As a direct and proximate result of the Defendants' violations of the Plaintiff's rights protected by Title II of the Americans with Disabilities Act ("ADA") (*42 U.S.C. § 12131* et seq.) and Section 504 of the Rehabilitation Act of 1973 (*29 U.S.C. § 794* et seq) the Plaintiff , Ralph Keller, suffered injury and damages including a worsening of his COPD medical conditions, impairment of breathing, standing, walking and movement in general, sores and bruises, headaches, depression, sleeplessness, embarrassment and humiliation, pain and suffering, mental

anguish, fright and shock, anxiety, nervousness, denial of social pleasure and enjoyment, forced medical hospitalization and increased medical expenses.

WHEREFORE, Plaintiff, Ralph Keller, respectfully requests this Honorable Court order judgment against the Defendants in an amount that is fair and just in accordance with the evidence produced at trial in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars including interest, costs, and statutory attorney fees and other special fees such as expert witness fees as provided by the Americans with Disability Act and the Rehabilitation Act and

Plaintiff further requests that 1) Defendants be ordered to discontinue the Defendants' blanket policy of prohibiting prosthetic limbs to incoming nonviolent inmates and that 2) Defendants be ordered to discontinue the Defendants' blanket policy of prohibiting incoming nonviolent inmates with a severe COPD condition from possession of inhaler devices and further 3) that Defendants' be ordered to make individualized assessments of all incoming inmates, who are qualified persons with a disability to determine what accommodation or adaptive aides are appropriate 4) and that the Court order such further relief as this Court deems necessary and proper as the interests of justice require.

Respectfully submitted,

/S/ Frank G. Becker
Frank G. Becker (P25502)
Attorney for Defendant
18501 West Ten Mile Road
Southfield, Michigan 48075
(248) 789-2437
frankgbecker@yahoo.com

Dated: January 15, 2019